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OFFICE OF PETITIONS

In re Application of	:
Martin Baumert, et. al.	:
Application No. 10/804,191	: DECISION ON PETITION
Filed: March 19, 2004	: UNDER 37 CFR 1.55(c)
Attorney Docket No. ATOCM-0349	:

This is a decision on the petition under 37 CFR 1.55(c), filed November 14, 2005, for acceptance of an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of the filing date of foreign French Application No. 03/03494, filed March 21, 2003.

This pending nonprovisional application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date **and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6))**;
- (3) the surcharge as set forth in 37 CFR 1.17(t);
- (4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional. (The Commissioner may require additional information where there is a question whether the delay was unintentional); and
- (5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

This application was filed on March 19, 2004, which is after November 29, 2000 and within 12 months of March 21, 2003 (the filing date of the foreign application to which benefit is now being claimed). On August 2, 2004, an executed oath/declaration was received which identifies the foreign application for which priority is claimed by application number, country and filing date. The required petition fee of \$1,370 was received with the petition. Lastly, petitioner has provided an adequate statement of unintentional delay.

All requirements being met, the petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a)-(d) is **GRANTED**.

The Office acknowledges receipt of Priority papers filed on December 12, 2005.

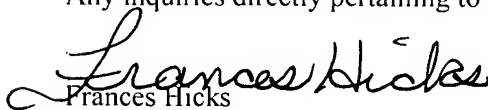
A review of the record reveals that the Office acknowledged provisional Application No. 60/508,966, as so indicated on the filing receipt mailed June 1, 2004. However, there is no indication that petitioner submitted a proper priority claim to the provisional application. If petitioner desires to claim priority to provisional Application No. 60/508,966, a proper amendment to the first line of the specification should be submitted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application(s) under 37 CFR 1.55(c) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application(s). In order for this application to be entitled to the benefit of the prior-filed application(s), all other requirements under 35 U.S.C. § 119(a)-(d) and 37 CFR 1.55(a)(1) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application(s) should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application(s) noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

A Corrected Filing Receipt, which reflects the above-noted foreign application, was mailed on February 17, 2005.

This application is being referred to Technology Center AU 1772 for examination in due course and for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d).

Any inquiries directly pertaining to this matter may be directed to Andrea Smith at (571) 272-3226.


Frances Hicks
Petitions Examiner
Office of Petitions